

FILED DATE: 4/10/2023 3:33 PM 2023L003485

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
LAW DIVISION

SECURA INSURANCE COMPANIES	)	
a/s/o TEMPERATURE ENGINEERING,	)	
INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2023-L-2023L003485
	)	
WENDY’S INTERNATIONAL, LLC	)	
d/b/a THE WENDY’S COMPANY, and	)	
WENDY’S PROPERTIES, LLC,	)	
	)	
Defendants.	)	

**COMPLAINT AT LAW**

NOW COMES the Plaintiff, SECURA INSURANCE COMPANIES as subrogee of TEMPERATURE ENGINEERING, INC., by and through its attorneys, THOMPSON, BRODY & KAPLAN, LLP, and for its Complaint at Law against the Defendants, WENDY’S INTERNATIONAL, LLC doing business as THE WENDY’S COMPANY, and WENDY’S PROPERTIES, LLC, hereby states as follows:

**COMMON ALLEGATIONS**

1. At all times relevant, the insured, TEMPERATURE ENGINEERING, INC. (hereinafter referred to as “Temperature Engineering”), was an Illinois corporation with its principal place of business located at 7475 South Madison Street, Suite 6 in Burr Ridge, Illinois 60527.
2. At all times relevant, the Plaintiff, SECURA INSURANCE COMPANIES (hereinafter referred to as “Secura”), was an insurance company with its headquarters located in the State of Wisconsin and licensed to issue worker’s compensation insurance policies to businesses within the State of Illinois, such as Temperature Engineering.

3. At all times relevant, Temperature Engineering purchased and maintained a worker's compensation insurance policy (Policy No. 3280813) with the Plaintiff, Secura, and this policy was in full force and effect on August 6<sup>th</sup>, 2022, the date of the loss.

4. At all times relevant, the Defendant, WENDY'S INTERNATIONAL, LLC d/b/a THE WENDY'S COMPANY (hereinafter referred to as "Wendy's"), was an Ohio corporation with its headquarters located at One Dave Thomas Boulevard in Dublin, Ohio 43017.

5. At all times relevant, the Defendant, Wendy's, owned and operated a chain of restaurants, one of which was located at 901 W. North Avenue in Melrose Park, Illinois 60160 (hereinafter referred to as "subject property").

6. Upon information and belief, the Defendant, WENDY'S PROPERTIES, LLC, is a Delaware corporation registered in Illinois and doing business within Illinois managing and maintaining the Wendy's locations and properties within Illinois, including the subject property.

7. Upon information and belief, Wendy's Properties, LLC is a wholly owned subsidiary of Wendy's International, LLC.

8. On or around August 6<sup>th</sup>, 2022, Wendy's hired Temperature Engineering to provide refrigeration services and maintenance at the subject property.

9. On or about August 6<sup>th</sup>, 2022, Mr. Jim Dubberke, an employee of Temperature Engineering, was servicing the walk-in freezer at the subject property in the scope of his employment.

10. On said date and location, employees and/or representatives of Wendy's stacked several boxes on top of one another within the walk-in freezer for its own purposes and/or to provide access for Mr. Dubberke.

11. On said date and location, Mr. Dubberke was standing on a ladder inside the walk-in freezer when the stacked boxes tipped over and fell on him and/or the ladder.

12. As a result, Mr. Dubberke fell from the ladder and suffered significant injuries.

13. Mr. Dubberke sought treatment for his injuries, and he filed a worker's compensation claim with Temperature Engineering requesting payment for said injuries and for his treatment and damages.

14. Pursuant to the Temperature Engineering worker's compensation policy and per the applicable IL Work. Comp. statutory provisions, Secura Insurance became obligated to pay and did pay for the treatment and injuries and damages in an amount in excess of \$50,000.00.

15. Secura Insurance also continues to pay Mr. Dubberke for certain damages claimed in his worker's compensation claim with Temperature Engineering.

16. Secura Insurance the has thereby become subrogated to the rights of its insured, Temperature Engineering, to the extent of the damages it has paid and continues to pay on this claim.

**COUNT I**  
**NEGLIGENCE**  
**(Wendy's International, LLC and Wendy's Properties, LLC)**

1-16. The Plaintiff hereby restates and realleges Paragraphs 1 through 16 of the Common Allegations as Paragraphs 1 through 16 of Count I, as though fully set forth herein.

17. At all times relevant, the Defendants, Wendy's, had a duty to exercise reasonable care in its conduct and actions, and in maintaining and/or keeping the subject property free from a hazardous and dangerous condition.

18. At all times relevant, the Defendants, Wendy's, had a duty to exercise reasonable care and to act non-negligently in clearing the walk-in freezer so that Mr. Dubberke could obtain access.

19. At all times relevant, the Defendants, Wendy's, had a duty to exercise reasonable care and to act non-negligently in stacking the boxes within the walk-in freezer so they did not create a dangerous and hazardous condition.

20. Notwithstanding the aforementioned duties, Wendy's breached its duties and was negligent in one or more of the following ways:

- a. Failed to exercise reasonable care in its conduct and/or actions in the maintenance of the subject property in such a way as to provide a safe work environment and safe premises;
- b. Failed to safely and properly clear the walk-in freezer so as to allow Mr. Dubberke access without risk of injury;
- c. Created a dangerous and hazardous condition for Mr. Dubberke as an invitee;
- d. Allowed a dangerous and hazardous condition to exist at the premises knowing that Mr. Dubberke had been asked to do work on the freezer; and
- e. Failed to safely and properly stack the boxes within the walk-in freezer so as to avoid a dangerous and hazardous condition that led to the subject injuries sustained by Mr. Dubberke; and
- f. Was otherwise careless and/or negligent in its conduct in clearing the walk-in freezer and stacking the boxes, thereby creating a dangerous and hazardous condition at the subject property that led to Mr. Dubberke's injuries.

21. As a direct and proximate result of the Defendants' careless and negligent acts and/or omissions, the Temperature Engineering employee, Jim Dubberke, was injured and sought payment for his treatment and injuries.

22. As a direct and proximate result of the Defendants' careless and negligent acts and/or omissions, Mr. Dubberke submitted a worker's compensation claim to his employer, Temperature Engineering.

23. Pursuant to its worker's compensation policy of insurance with Temperature Engineering, Secura Insurance became obligated to pay and did pay for the treatment and damages in an amount in excess of \$50,000.00.

WHEREFORE, the Plaintiff, SECURA INSURANCE COMPANIES as subrogee of TEMPERATURE ENGINEERING, INC., respectfully requests that this Court enter judgment in its favor and against the Defendants, WENDY'S INTERNATIONAL, LLC d.b.a. THE WENDY'S COMPANY and WENDY'S PROPERTIES, LLC, in an amount in excess of \$50,000.00, to be determined at trial, plus interest and the reasonable costs and fees for having to bring this action, and for any other relief this Court deems just and appropriate.

**COUNT II**  
**RES IPSA LOQUITUR**  
**(Wendy's International, LLC and Wendy's Properties, LLC)**

1-23. The Plaintiff hereby restates and realleges Paragraphs 1 through 23 of Count I as Paragraphs 1 through 23 of Count II, as though fully set forth herein.

24. In the normal course of events, and in the absence of negligence, Mr. Dubberke would not have sustained injuries if not for the Defendants' dangerous premises and for their negligence.

25. In the normal course of events, and in the absence of negligence, the damages sustained by Temperature Engineering would not have occurred if the Defendants had used ordinary care while in the ownership and control of the business and property located at 901 West North Avenue in Melrose Park, Illinois 60160.

26. However, while the Defendants were in the ownership and control of the business and property, Mr. Dubberke sustained injuries while servicing the walk-in freezer at the subject property.

27. As a direct and proximate result, Mr. Dubberke filed a worker's compensation claim with Temperature Engineering for his treatments.

28. Therefore, it is appropriate that the burden of proof shift to the Defendants.

29. It is also appropriate that the Plaintiff, Secura Insurance, recover on this case under the doctrine of Res Ipsa Loquitor, and that the Defendants be found liable for the damages incurred herein.

WHEREFORE, the Plaintiff, SECURA INSURANCE COMPANIES as subrogee of TEMPERATURE ENGINEERING, INC., respectfully requests that this Court enter judgment in its favor and against the Defendants, WENDY'S INTERNATIONAL, LLC d.b.a. THE WENDY'S COMPANY and WENDY'S PROPERTIES, LLC, in an amount in excess of \$50,000.00, to be determined at trial, plus interest and the reasonable costs and fees for having to bring this action, and for any other relief this Court deems just and appropriate.

Respectfully submitted,

/s/ Stuart M. Brody  
*Plaintiff's Attorney*

Stuart M. Brody, Esq.  
THOMPSON, BRODY & KAPLAN, LLP  
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Firm No. 61579

Hearing Date: No hearing scheduled  
 Location: <<CourtRoomNumber>>  
 Judge: Calendar, H



Franklin County Sheriff's Office  
 Affidavit of Service

FILED  
 4/28/2023 1:37 PM  
 IRIS Y. MARTINEZ  
 CIRCUIT CLERK  
 COOK COUNTY, IL  
 2023L003485  
 Calendar, H  
 22499210

SECURA INS COMPANIES ADO )  
 TEMPERATURE ENGINEERING INC )

Petitioner/Plaintiff )

-vs- )

Case #: 2023L003485  
 Service #: 2081420

WENDYS INTERNATIONAL LLC DBA THE )  
 WENDYS CO ET AL )  
 Respondent/Defendant )

STATE OF OHIO )  
 ) SS:  
 COUNTY OF FRANKLIN )

Bryan Sibbalds, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified as an acting Deputy Sheriff of Franklin County, State of Ohio, a citizen of the United States, not a party to, nor interested in, the above entitled action; that on 04/20/2023, at the hour of 09:16 AM affiant as such Deputy Sheriff served a copy/copies of Out Of State Service 1 out of state summons, and 1 out of state complaint issued in the above entitled action upon Wendys International Llc Dba The Wendys Co Et Al by delivering to and leaving with said person Residential Service Security at 1 Dave Thomas Blvd Dublin, Oh 43017 within the County of Franklin, State of Ohio.

Security

Dallas L. Baldwin, Sheriff of Franklin County



JANET HORNSBY  
 Notary Public, State of Ohio  
 My Commission Expires 10-17-2023

By: Bryan Sibbalds  
 BRYAN SIBBALDS  
 DEPUTY SHERIFF

Subscribed and Sworn to before me this:  
24th of April, 2023.

Janet Hornsby  
 Notary Public, State of Ohio





**SHERIFF'S OFFICE OF COOK COUNTY  
AFFIDAVIT OF SERVICE**

**CASE NUMBER:** 2023L003485    **SHERIFF NUMBER:** 50277492    **MULT. SER.:** 1    **DOC. TYPE:** LAW  
**DIE DATE:** 05/03/2023    **RECEIVED DATE:** 04/18/2023    **FILED DATE:** 04/10/2023    **DIST:** 68

<b>DEFENDANT:</b> WENDY'S PROPERTIES LLC	<b>PLAINTIFF:</b> SECURA INSURANCE COMPANIES
<b>ADDRESS:</b> 350 S Northwest	<b>ATTORNEY:</b> THOMPSON BRODY KAPLAN LLP
<b>CITY:</b> Park Ridge	<b>ADDRESS:</b> 350 N Clark St 3575
<b>STATE:</b> IL <b>ZIP CODE:</b> 60068	<b>CITY:</b> CHICAGO
<b>ATTACHED FEE AMT:</b>	<b>STATE:</b> IL <b>ZIP CODE:</b> 60601
<b>SERVICE INFORMATION:</b> Registered Agent - United Agent Group Inc	

**I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:**

- ☐ **(1) PERSONAL SERVICE:** BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.
- ☐ **(2) SUBSTITUTE SERVICE:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON THE DAY OF 20.
- ☐ **(3) UNKNOWN OCCUPANTS:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.
- ☒ **(4) CORP/CO/BUS/PART:** BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION        COMPANY        BUSINESS        PARTNERSHIP
- ☐ **(5) PROPERTY RECOVERED:** NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.
- ☐ **(6) S.O.S/D.O.I.:** BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.
- ☐ **(7) CERTIFIED MAIL**
- \*\*\*\* COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT \*\*\*\*
- ☐ **(8) AND BY MAILING ON THE**        **DAY OF**        **20**        **A COPY OF THE THIRD PARTY GARNISHMENT/CITATON SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.**

**THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> (01) NO CONTACT | <input type="checkbox"/> (05) WRONG ADDRESS               | <input type="checkbox"/> (09) DECEASED               |
| <input type="checkbox"/> (02) MOVED      | <input type="checkbox"/> (06) NO SUCH ADDRESS             | <input type="checkbox"/> (10) NO REGISTERED AGENT    |
| <input type="checkbox"/> (03) EMPTY LOT  | <input type="checkbox"/> (07) EMPLOYER REFUSAL            | <input type="checkbox"/> (11) OUT OF COOK COUNTY     |
| <input type="checkbox"/> (04) NOT LISTED | <input type="checkbox"/> (08) CANCELLED BY PLAINTIFF ATTY | <input type="checkbox"/> (12) OTHER REASON (EXPLAIN) |

**EXPLANATION:**

**WRIT SERVED ON:** NANCY VOGG  
**SEX:** F    **RACE:** WH    **AGE:** 40  
**THIS** 02 **DAY OF** May 20 23  
**TIME:** 5:53 PM

THOMAS J. DART,  
 SHERIFF, BY: /s/ CALOMINO, SALVATORE #17007 , DEPUTY





**SHERIFF'S OFFICE OF COOK COUNTY  
AFFIDAVIT OF SERVICE**

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